

**Introduced by Senator Romero**

February 15, 2007

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An act to amend Section 32010 of, and to add Chapter 3.58 (commencing with Section 7289.20) to Part 1.7 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 297, as introduced, Romero. Taxation: alcoholic beverages.

The Alcoholic Beverage Tax Law provides that taxes imposed by that law are in lieu of all county, municipal, or district taxes on the sale of beer, wine, or distilled spirits.

This bill would provide an exception to this prohibition by authorizing the board of supervisors of a county, subject to certain conditions that include voter approval, to levy on a countywide basis, for revenue purposes only, a tax on the privilege of consuming beer, wine, and distilled spirits, as defined, purchased in a retail sale for consumption on the premises of the seller, at a rate of at least  $\frac{1}{8}$  of 1%, but not to exceed 5%, of the sale price, as provided.

The bill would require the board of supervisors of a county either to notify the State Board of Equalization that the county will administer its tax on its own behalf or that it will contract with the State Board of Equalization to administer the tax, as provided.

This bill would also specify that a tax imposed under those provisions shall conform to certain tax laws and not prohibit the concurrent application or administration of other taxes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares that the  
2 inability of local governments to adequately provide essential  
3 services is a matter of statewide concern, and that this measure is  
4 necessary to meet that concern by allowing local governments to  
5 maintain critically needed public services.

6 (b) The Legislature further finds and declares that because  
7 counties lack a strong revenue base upon which to levy new taxes,  
8 counties are constrained in their ability to raise sufficient new  
9 revenues to meet the needs of their constituencies. These fiscal  
10 restraints limit the counties' flexibility to fund and administer the  
11 types and levels of programs needed by their constituencies,  
12 thereby hindering the counties' ability to provide those necessary  
13 programs and services. Authorizing counties to raise new revenues  
14 for local program needs, such as county health care, is therefore  
15 of considerable interest to the state.

16 SEC. 2. It is the intent of the Legislature in enacting this act  
17 to allow the board of supervisors of a county to levy, on a  
18 countywide basis for revenue purposes only, a tax on the privilege  
19 of consuming beer, wine, and distilled spirits purchased in a retail  
20 sale for consumption on the premises of the seller of the beer,  
21 wine, or distilled spirits. It is not the intent of the Legislature to  
22 create a transactions and use tax as described in Part 1.6  
23 (commencing with Section 7251) of Division 2 of the Revenue  
24 and Taxation Code.

25 SEC. 3. Section 32010 of the Revenue and Taxation Code is  
26 amended to read:

27 32010. ~~The~~(a) *Except as otherwise provided in Chapter 3.58*  
28 *(commencing with Section 7289.20) the* taxes imposed by this part  
29 are in lieu of all county, municipal, or district taxes on the sale of  
30 beer, wine, or distilled spirits.

31 ~~This~~

32 (b) *This* section does not prohibit the application of Part 1  
33 (commencing with Section 6001), Part 1.5 (commencing with  
34 Section 7200) or Part 1.6 (commencing with Section 7251) to the  
35 sale, storage, use or other consumption of beer, wine, or distilled  
36 spirits.

1 SEC. 4. Chapter 3.58 (commencing with Section 7289.20) is  
2 added to Part 1.7 of Division 2 of the Revenue and Taxation Code,  
3 to read:

4  
5 CHAPTER 3.58. COUNTY ALCOHOLIC BEVERAGE TAX  
6 AUTHORITY  
7

8 7289.20. (a) Subject to the requirements of subdivision (b),  
9 the board of supervisors of a county may impose a tax, in addition  
10 to any other tax authorized by this division, on the privilege of  
11 consuming beer, wine, or distilled spirits purchased in a retail sale  
12 for consumption on the premises of the seller of the beer, wine, or  
13 distilled spirits. The board of supervisors may impose this tax  
14 within an incorporated city within the county.

15 (b) Any tax imposed under this section shall meet all of the  
16 following requirements:

17 (1) (A) An ordinance proposing a general tax shall be approved  
18 by a vote of two-thirds of the entire membership of the county  
19 board of supervisors, and shall be approved by a majority of the  
20 county's voters voting on the issue in an election.

21 (B) An ordinance proposing a special tax shall be approved by  
22 a majority vote of the entire membership of the county board of  
23 supervisors, and shall be approved by two-thirds of the county's  
24 voters voting on the issue in an election.

25 (2) The ordinance proposing the tax shall state the purpose or  
26 purposes for which the tax revenues are to be expended.

27 (3) The ordinance proposing the tax shall state the rate of the  
28 tax and the length of time for which the tax shall be imposed.

29 (4) The ordinance proposing the tax shall provide that the tax  
30 shall conform to Part 1.6 (commencing with Section 7251).

31 (5) The tax shall be imposed at a rate of at least one-eighth of  
32 1 percent, with greater rates in increments of one-eighth of 1  
33 percent, but not to exceed 5 percent of the underlying sale price,  
34 inclusive of other charges, taxes, or levies.

35 (c) (1) A producer, distributor, wholesaler, or retailer of beer,  
36 wine, or distilled spirits is not subject to the tax imposed pursuant  
37 to this section.

38 (2) The charging of an admission or sampling fee by breweries  
39 or wineries does not constitute the sale of beer, wine, or distilled

1 spirits for consumption on the premises of the seller within the  
2 meaning of this section.

3 7289.21. For purposes of this chapter, “beer, wine, and distilled  
4 spirits” have the same meanings as provided in Sections 23005,  
5 23006, and 23007 of the Business and Professions Code.

6 7289.22. (a) The imposition of a tax pursuant to this chapter  
7 does not prohibit the concurrent application of a tax imposed  
8 pursuant to the Sales and Use Tax Law (Part 1 (commencing with  
9 Section 6001)), the Bradley-Burns Uniform Sales and Use Tax  
10 Law (Part 1.5 (commencing with Section 7200)), or of a tax  
11 imposed in accordance with the Transactions and Use Tax Law  
12 (Part 1.6 (commencing with Section 7251)), to the sale, storage,  
13 use, or other consumption of beer, wine, or distilled spirits.

14 (b) Notwithstanding Section 7203.5 or any other provision of  
15 law, the imposition of a tax pursuant to this chapter by a county  
16 does not prohibit the concurrent administration by the board of a  
17 sales or use tax ordinance adopted by that county pursuant to the  
18 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5  
19 (commencing with Section 7200)).

20 7289.23. Any ordinance levying a tax pursuant to this chapter  
21 shall provide that the tax shall conform to Part 1.6 (commencing  
22 with Section 7251). However, a tax imposed pursuant to this  
23 chapter is not a sales tax or transactions tax, and shall not be  
24 considered for purposes of Section 7251.1.

25 7289.24. An ordinance adopted pursuant to this chapter shall  
26 be operative on the first day of a calendar quarter commencing  
27 more than 110 days after the adoption of the ordinance.

28 7289.25. Every retailer engaged in business in a county that  
29 has an operative ordinance adopted pursuant to this chapter shall,  
30 at the time of making a sale of beer, wine, or distilled spirits for  
31 consumption on the premises of the seller, collect the tax from the  
32 consumer and give to the consumer a receipt therefor in the manner  
33 and form prescribed by the State Board of Equalization or by the  
34 county board of supervisors, if the county elects to administer its  
35 own tax pursuant to subdivision (a) of Section 7289.26.

36 7289.26. Prior to the operative date of any ordinance imposing  
37 a tax pursuant to this chapter, the board of supervisors of the county  
38 shall do either of the following:

39 (a) Notify the State Board of Equalization in writing that the  
40 county will be responsible for administering the tax imposed

1 pursuant to an ordinance authorized by this chapter on its own  
2 behalf, and that the ordinance does not impose any duties or  
3 responsibilities for administering the tax upon the State Board of  
4 Equalization.

5 (b) Contract with the State Board of Equalization to perform  
6 all functions incident to the administration and operation of the  
7 ordinance. If the county has not contracted with the board prior to  
8 the operative date of the ordinance, but shall contract, the operative  
9 date shall be delayed until the first day of the first calendar quarter  
10 following the execution of the contract.

11 7289.27. For a county that elects to contract with the State  
12 Board of Equalization to administer a tax imposed by the county,  
13 as authorized by this chapter, the following provisions apply:

14 (a) The contract shall contain the following provisions:

15 (1) A provision that the county shall reimburse the State Board  
16 of Equalization for, and hold the board harmless from, any and all  
17 costs, losses, or refunds.

18 (2) A provision that, in the event that a legal action is  
19 commenced challenging the validity of the tax in its entirety, as  
20 opposed to the application of the tax to an individual taxpayer, the  
21 county shall place the tax proceeds into an interest-bearing escrow  
22 account until the legality of the tax is resolved by a final and  
23 nonappealable decision of a court of competent jurisdiction. This  
24 provision is enforceable by any interested party in a proceeding  
25 for a writ of mandate.

26 (b) The county shall reimburse the State Board of Equalization  
27 for any costs the board incurs in preparing to administer and  
28 operate the tax. The county shall reimburse the board as the costs  
29 are incurred and billed by the board, on a monthly basis. These  
30 reimbursable costs shall include costs incurred for the following:

31 (1) Developing procedures.

32 (2) Programming for data processing.

33 (3) Developing and adopting appropriate regulations.

34 (4) Designing and printing forms.

35 (5) Developing instructions for the State Board of Equalization  
36 staff and for taxpayers.

37 (6) Any other necessary preparatory costs, including the State  
38 Board of Equalization's direct and indirect costs as specified by  
39 Section 11256 of the Government Code.

1 (c) Any disputes as to the amount of preparatory costs incurred  
2 by the State Board of Equalization shall be resolved by the Director  
3 of Finance, whose decision shall be final. The maximum amount  
4 of all preparatory costs to be paid by the county to the board shall  
5 not exceed one hundred seventy-five thousand dollars (\$175,000).

6 (d) In addition to the amounts paid to the State Board of  
7 Equalization for the preparatory costs described in subdivision (b),  
8 the county shall reimburse the board for the cost of the board's  
9 services in administering the tax. The amount of this cost shall be  
10 determined by the board with the concurrence of the Department  
11 of Finance.

12 (e) All revenues collected from taxes imposed pursuant to the  
13 authorization of this chapter in counties that have contracted with  
14 the State Board of Equalization to administer the tax shall be  
15 remitted to the board and allocated by the board as follows:

16 (1) First, for reimbursement to the board for the reasonable  
17 costs, as specified in subdivisions (b) and (d), of administering  
18 and enforcing the tax ordinance on behalf of the county pursuant  
19 to the contract between the board and the county.

20 (2) Second, for transmission to each county that has contracted  
21 with the board pursuant to subdivision (b) of Section 7289.26, in  
22 proportion to the amount of revenues derived from each county's  
23 respective tax.

24 (f) The State Board of Equalization shall transmit to a county  
25 all revenues derived from the taxes imposed pursuant to this chapter  
26 and collected by the board pursuant to a contract with the county  
27 periodically as promptly as feasible. The transmittals shall be made  
28 at least twice in each calendar quarter.

29 7289.28. Except as provided in Section 7289.29, to the extent  
30 practicable, Chapter 5 (commencing with Section 6451), Chapter  
31 6 (commencing with Section 6701), Chapter 7 (commencing with  
32 Section 6901), and Chapter 8 (commencing with Section 7051) of  
33 Part 1, shall govern determinations, collection of tax,  
34 overpayments, and refunds, and administration of all taxes imposed  
35 under the authorization of this chapter.

36 7289.29. The return and payment of any tax imposed pursuant  
37 to the authorization of this chapter and collected by a retailer as  
38 specified in Section 7289.25 is due and payable from the retailer  
39 to the board on the same date as the return and payment of the tax  
40 imposed pursuant to Part 1 (commencing with Section 6001),

1 provided that the retailer is within the jurisdiction of a county that  
2 elects to contract with the board to administer the tax, pursuant to  
3 subdivision (b) of Section 7289.26. If the retailer is within the  
4 jurisdiction of a county that has elected not to contract with the  
5 board to administer the tax, the return and payment of the tax  
6 imposed pursuant to the authorization of this chapter is due and  
7 payable from the retailer as prescribed in the ordinance adopted  
8 by the county.

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